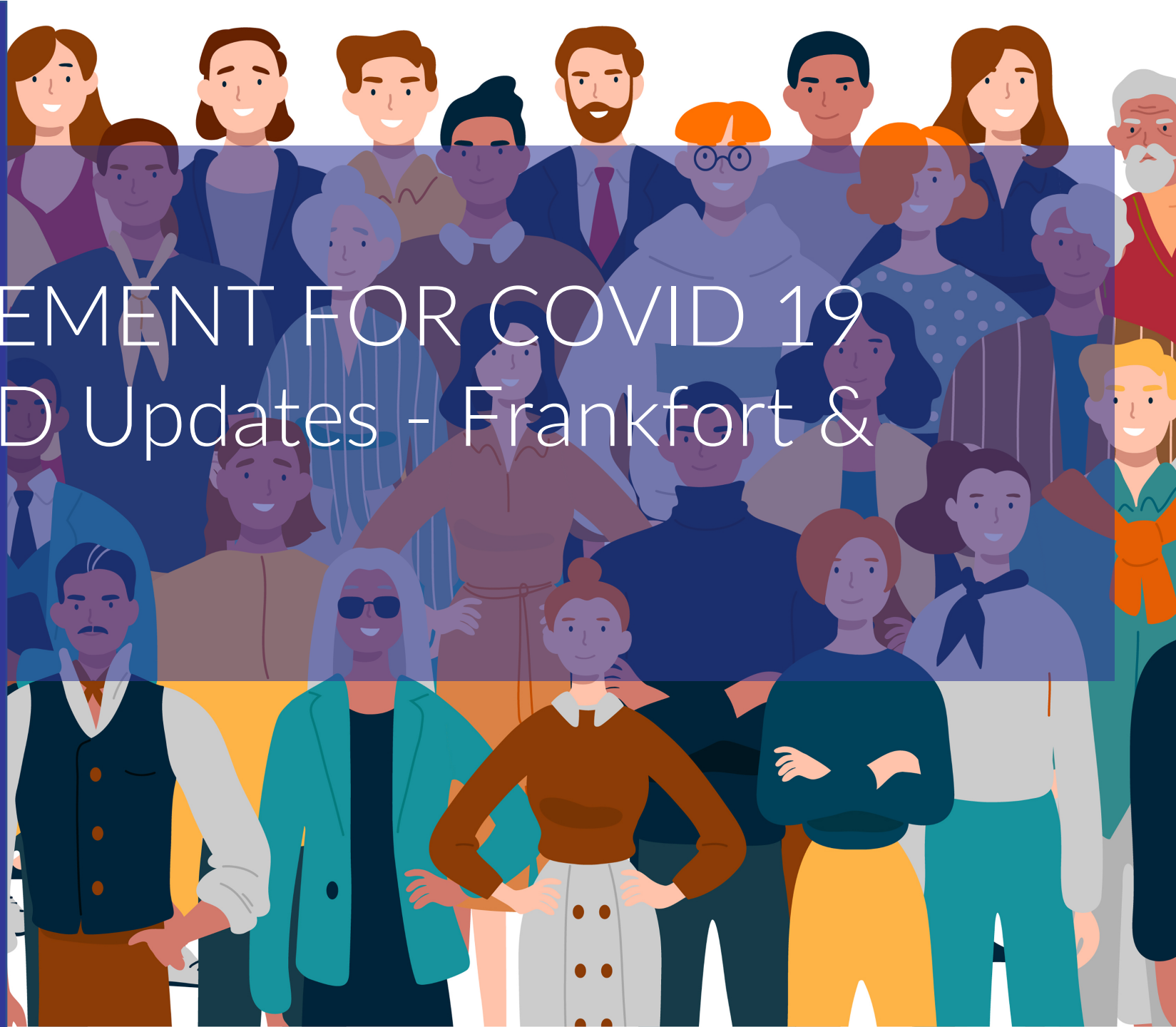


CRISIS MANAGEMENT FOR COVID 19

Phase 44: COVID Updates - Frankfort & Beyond!

*Presented by:
Hanna Resource Group
and
Morris & Morris, PSC*



INTRODUCTIONS



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(R - Western KY)

WHAT WE'LL COVER

1

What's being discussed in Frankfort and what changes we may expect

2

What you need to know from a regulatory and legal standpoint



1

What's being
discussed in
Frankfort and what
changes we may
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**Senator Morgan
McGarvey**
(D - Louisville)



1

What's being
discussed in
Frankfort and what
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**Senator Whitney
Westerfield**
(R - Western KY)



2

What you need to
know from a
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Tyler J. Morris, Sr. Esq.

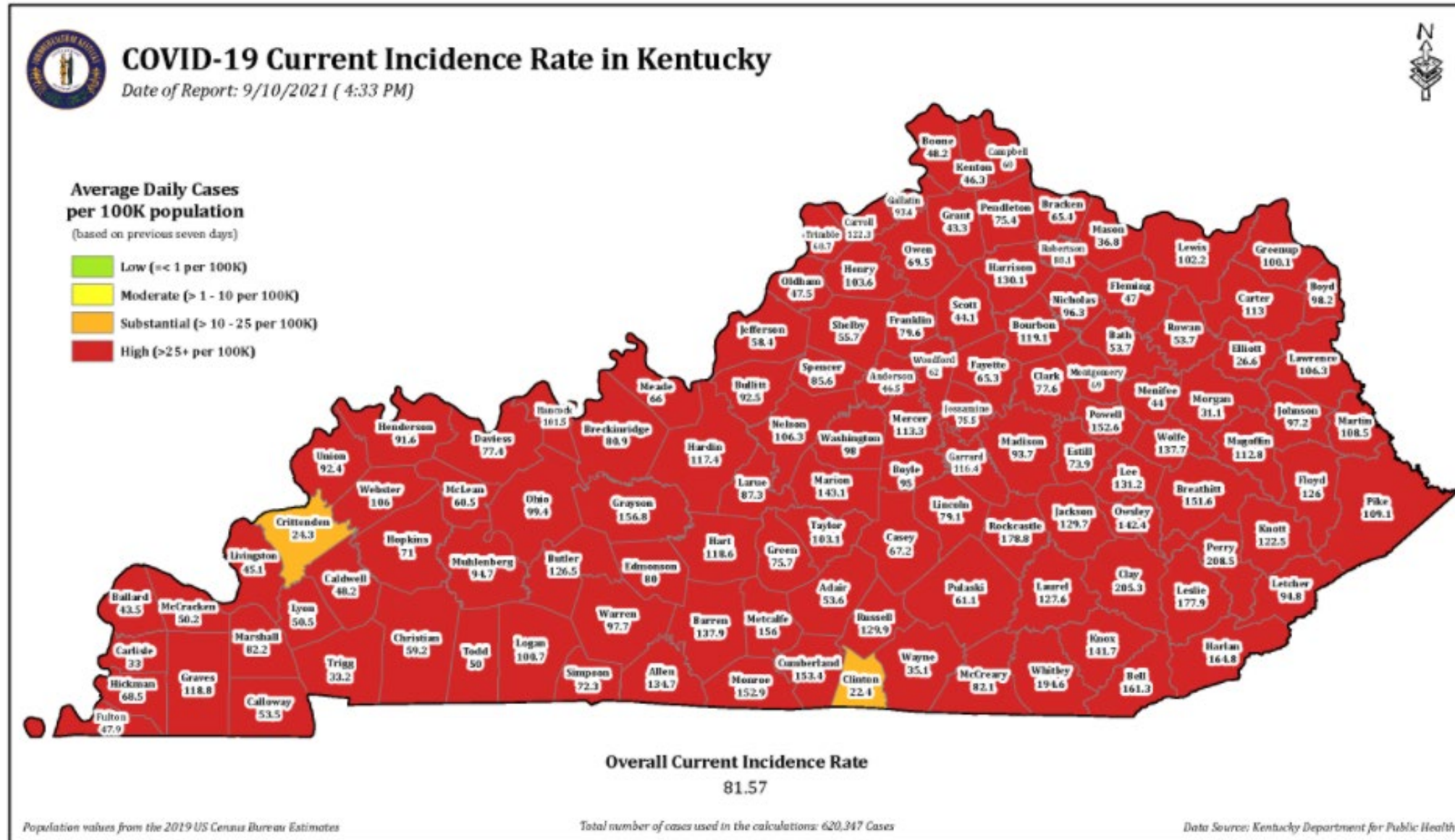
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On September 9, 2021, President Biden outlined a 6-step strategy to combat COVID-19 via various Orders:

1. Requiring an OSHA Emergency Temporary Standard to mandate that all employers with more than 100 employees are to require their employees to be vaccinated, or to submit to regular testing. Federal workers (and contractors, via Executive Order) are mandated to be vaccinated without an option to choose regular testing rather than receive the vaccine.
2. Booster shots are now recommended for those vaccinated for at least 8 months. FDA has not yet approved.
3. The third step focuses on K-12 education. Federal Government will pay the salary of any teacher or administrator who has pay withheld by any state who opposed the mask requirements. Further, the President is recommending vaccination requirements for all teachers and staff members, and will require over 300,000 federal Head Start educators to be vaccinated.
4. The President intends to use the Defense Production Act to accelerate production of rapid tests and is sending millions of free tests to various healthcare facilities. Retailers will be able to sell at-home tests for the next three months, although those tests will not be free.
5. Intends to expand the Economic Injury Disaster Loan program, quadrupling the amount small businesses with sales impacted are allowed to borrow (was \$500k, now \$2mm.).
6. Intends to expand the availability of new medications to help combat COVID-19, announcing an increase of shipments. Further, the military is being deployed to overburdened hospitals around the United States.

*****Some of these strategies will require legislative action in order to allocate funding before implementation**

- As Jim has discussed previously, in our opinion, a “national mask mandate” would be, in fact, unconstitutional
 - However, as we also mentioned, back in February, an OSHA ETS is a “work around” for such limitations
 - This “loophole” could cause problems, since Chief of Staff Klain admitted the intent to institute a national mask mandate, retweeting, with approval, a tweet stating that “OSHA doing this vaxx mandate as an [ETS] rule is the ultimate work-around for the Federal govt to require vaccinations.”
 - The legality of the work-around is yet to be fully determined but it will definitely impact businesses, as it will be implemented, most likely, under the ETS, which will be immediately enforceable without comment
 - Any future determination that the mandate was unconstitutional will occur after the implementation
- We anticipate an imminent update to the Emergency Temporary Standard
 - President is requesting OSHA declare that COVID-19 is a “known-danger.” What does this mean?
 - Under the “General Duty” clause, OSHA requires employers to take all available precautions to protect employees from known dangers. With COVID-19 being identified as a known danger, and an ETS implemented, employers will be required to undertake all reasonable steps to protect against the virus.
 - Potentially includes requiring vaccines, requiring masks for employees, AND requiring patrons to wear masks, as well as increased sanitization, and more because of OSHA’s General Duty Clause.
 - Because anyone that interacts with employees has the potential to have COVID-19, employers must adhere to the cautions implemented to protect employees at risk of contracting a “known-danger.”
 - Essentially a mask mandate loophole – a mandate without an actual mandate.
- We expect many changes in the coming weeks, and we will likely have another webinar to cover!



Based upon the increased instance of COVID-19, and the impact upon the Commonwealth, the Governor issued new guidance and updates for Kentuckians facing this new phase of the COVID-19 Pandemic:

- On September 9, 2021, the Governor gave an update on COVID-19 in the Commonwealth as COVID cases are on the rise.
 - The Governor announced plans to send over 300 additional members of the National Guard to support Kentucky hospitals.
 - Currently only 4 hospitals were receiving support from the Guard. That number is now increased to 25.
- Based upon the Supreme Court's rejection of the Governor's appeal of the legislature's limitations upon his authority, the Governor called a Special Session to address the various COVID-19 concerns.
- Following the Special Session, the Kentucky Legislature passing controversial bills over the Governor's vetoes:
 - The Legislature voted to disallow the State's mask mandate for public schools.
 - Each individual school board or governing body will make its independent determination as to requiring masks, etc.
 - A ban on statewide mask mandates was implemented.
 - Each community will determine how to appropriately address its residents
 - Finally, the legislature approved various spending bills related to COVID-19.

- The legality of some of the President's efforts are still to be decided, but it is likely that the President is within his authority.
- Kentucky's status will be much more stable in the foreseeable future, since the Governor's authority has been drastically reduced, and the Supreme Court has weighed in on that limitation.
- Even though Kentucky has banned mask mandates, Kentucky employers are still going to have to monitor Federal mandates and safety protocols, including, specifically, the OSHA ETS in order to protect against "known-dangers," including COVID-19.
 - This may require Kentucky employers with more than 100 employees to mandate vaccinations for their employees, to mandate masks for their employees, as well as mandating masks for customers and visitors in their offices.
 - However, the "General Duty" clause may well have a "whiplash" effect and cause employers with less than 100 employees to be required to at least consider protections available to avoid exposure to the "known danger" of COVID-19 once the ETS is issued
- Until we know more, and until (if) an ETS is entered, employers need to continue to check for OSHA updates, as an ETS becomes mandatory the moment it is entered.

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HRCI CODE: 569962



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